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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/807,672	03/24/2004	Mark D'Andreta	9872-000005	4333
27572	7590	07/11/2008		
HARNESS, DICKEY & PIERCE, P.L.C.				
P.O. BOX 828				
BLOOMFIELD HILLS, MI 48303				
EXAMINER				
MAL, TRI M				
ART UNIT		PAPER NUMBER		
3781				
MAIL DATE		DELIVERY MODE		
07/11/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/807,672

Applicant(s)

D'ANDRETA, MARK

Examiner

Tri M. Mai

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 and 20-29 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-10 and 20-29 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-946)
- 3) ☐ Information Disclosure Statement(s) (PTO/SE-08)
Paper No(s)/Mail Date ____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date ____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: ____

1. Claims 1-2, 5-10, 20, 21, and 21-29 are rejected under 35 U.S.C. 103 (a) as being unpatentable over Tsui (6085449) and further in view of DeWoskin (4606079), and further in view of Brosk (3577604). Tsui teaches a device with a band portion and a transparent window 10a (col. 3, ln. 7). With respect to the new limitation of the free ends of the bands being attached with heat seal. DeWoskin teaches that it is known in the art to provide heat seal for attaching the end of a strap, col. 5, ln. 25-32. It would have been obvious for one of ordinary skill in the art to provide heat seal for attaching the two ends of the strap to the device to provide the desired attachment to the device.

Brosk teaches that it is known in the art to provide further evidence that it is known to provide an endless loop for a band with the attachment of an elastic band at the two ends. Thus, to provide such an endless loop on the device of Tsui would have been obvious.

Regarding claim 21, it would have been obvious for one of ordinary skill in the art to provide the dimension as claimed to provide the desired size for the band.

2. Claims 3, 4, 24, and 26-29 are rejected under 35 U.S.C. 103 (a) as being unpatentable over Tsui in view of Brady (5704067). It would have been obvious for one of ordinary skill in the art to provide absorbing foam material as taught by Brady, col. 2, ln. 20-22, to provide the desired material for the band.

3. Claims 1, 2, 5, 7, 9, 10, 20-23, and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hucknall in view of either Brosk (3577604) or Harris (4499741) and further in view of Lerro (4078660). Hucknall teaches a band portion 13 circumferentially surrounding a substantial portion of the watch, a transparent window 7 connecting with the band portion. Hucknall does not teach the cover is attached to the ends of the band portion by heat seal. Brosk

teaches that it is known in the art to provide an endless loop for a band with the attachment of an elastic band at the two ends. Thus, to provide such an endless loop on the device of Tsui would have been obvious.

Harris teaches that it is known in the art to provide a band 30 being attached at two ends. It would have been obvious to one of ordinary skill in the art to have the two end of the band attached to the two ends of the cover to provide an alternative band for the cover.

With respect to the heat seal, Lerro teaches that it is known in the art to provide heat seal for an arm band, 43, and 19. It would have been obvious for one of ordinary skill in the art to provide heat seal to attach the plastic material to the band to provide an alternative means for attaching the plastic material to the band.

Regarding claims 21, it would have been obvious for one of ordinary skill in the art to provide the dimension as claimed to provide the desired size for the user.

4. Claims 3, 4, 8, 24, and 26-29 are rejected under 35 U.S.C. 103 (a) as being unpatentable over Hucknall rejections as set forth in paragraph 5, and further in view of Brady (5704067). It would have been obvious for one of ordinary skill in the art to provide absorbing foam material as taught by Brady, col. 2, ln. 20-22, to provide the desired material for the device.

5. Claim 6 is rejected under 35 U.S.C. 103 (a) as being unpatentable over Hucknall rejections as set forth in paragraph 3, and further in view of Worth (5924135) or Karpf (1857195). It would have been obvious for one of ordinary skill in the art to provide clear plastic film as taught by either Worth or Karpf to provide the desired material for covering the watch.

6. Applicant's arguments have been fully considered but they are not persuasive. It is noted that the claims as amended does not read over the prior art of record as set forth above. It is

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noted applicant fails to address the 103 rejection as set forth above. The examiner submits that to attach two parts using heat sealing would have been obvious since one of ordinary skill in the art known to use other methods for attaching two separate parts. Applicant is noted of the KSR vs. Teleflex decision:

When a work is available in one field, design incentives and other market forces can prompt variations of it, either in the same field or in another. If a person of ordinary skill in the art can implement a predictable variation, and would see the benefit of doing so, §103 likely bars its patentability. **Moreover, if a technique has been used to improve one device, and a person of ordinary skill in the art would recognize that it would improve similar devices in the same way, using the technique is obvious unless its actual application is beyond that person's skill**

In this case, using heat sealing as taught by DeWoskin would have been obvious. Similar to the Hucknall rejection, Hucknall teaches the transparent portion to be placed within an aperture for the band. Brock teaches that it is known in the art to provide a band that is attached at the two free ends. Thus to attach the window portion at the two free end would have been obvious as taught by Brock.

With respect to the using of foam elastic material, the examiner submits that to substitute one kind of material for another kind of material, in this case, elastic foam, requires only simple and within the skill of one ordinary skill in the art.

The 103 rejections stand.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tri M. Mai whose telephone number is (571)272-4541. The examiner can normally be reached on 7:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on (571)272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Tri M. Mai/
Primary Examiner, Art Unit 3781